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In the Supreme Court of the United States

OCTOBER TERM 1972

No. 306

MONTY M. STANLEY,

Petitioner,

vs.

MARJORIE TAYLOR,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent prays that the Writ of Certiorari be denied.

OPINION BELOW

This case was tried before a jury, accordingly, the trial court filed no opinion. The opinion of the Appellate Court of Illinois for the Fourth Judicial District has been reproduced as an appendix to the Petition for Writ of Certiorari.[1] An application to the Illinois Supreme Court to Appeal as a Matter of Right, or in the alternative, as a Petition for Leave to Appeal was filed and was denied on May 25, 1972.

[1] Petition for Writ of Certiorari, pp. A-1 to A-12.

The Petition for Writ of Certiorari was filed on August 23, 1972.

Jurisdiction

Petitioner alleges that the Court has jurisdiction of this cause pursuant to 28 U.S.C. 1257(3). Petitioner's theory is that an outright reversal of a jury award in a *per se* slander case even though solely on the ground of state substantive law, is a denial of jury trial and Fourteenth Amendment due process and equal protection.

Respondent contends that the reversal solely on the basis of state substantive law of a jury verdict in a civil case by a State Appellate Court does not raise a federal question. This is particularly so when that reversal is based upon the construction of state law as is the case in the suit at bar.

Question Presented

Does the determination by the Illinois Appellate Court that the language sued upon by petitioner is not actionable *per se* under Illinois substantive law raise a federal question (jury trial, due process, equal protection) which is reviewable, or should be reviewed, by this Court?

Statement Of The Case

The Illinois Appellate Court, whose judgment petitioner seeks to have this Court review, held unanimously that certain derogatory statements made by Respondent, an Illinois high school teacher, of petitioner, her principal, were not, under Illinois substantive law, actionable as slander *per se*. Accordingly, that being the single threshold issue before the Court, it reversed outright a jury verdict awarding Petitioner $75,775 of general damages. The only issue raised in this case in the Illinois courts was

whether the statements complained of were *per se* slanderous under Illinois substantive law. No federal question was involved; none was decided.[2] The Illinois Appellate Court pointed out:

> "Plaintiff . . . [a]t the conference on jury instructions . . . made an election to proceed only on Count I (slander *per se*), and as a consequence, the jury was instructed only on the issues thereunder." (Petition, p. A-6)

The Court then held:

> "In our opinion the utterances under consideration in this case as shown by the record, do not qualify as slander *per se*. Accordingly, the trial court should have entered judgment for defendant [respondent] notwithstanding the verdict pursuant to the defendant's [respondent's] motion.
>
> "Therefore, for the reasons stated, the judgment of the Circuit Court of Cass County is reversed." (Petition, p. A-12)

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[2] However, on petition for rehearing in the Appellate Court and his attempted appeal to the Illinois Supreme Court petitioner asserted the constitutional claims he argues in this Court.

Argument

In essence Petitioner claims that the reversal without remandment of his trial court jury award is tantamount to an abridgement of his fundamental right of civil trial by jury and a denial of due process and equal protection under the Fourteenth Amendment. This argument is made despite the fact that the Illinois Appellate Court's reversal of the jury award is based entirely upon a matter of Illinois substantive law, *viz.*, that the language complained of and sued upon was not actionable *per se*. Whether or not complained of language is actionable *per se* is strictly a matter of state substantive law. Even if the Illinois Appellate Court was in error as to the state substantive law, (respondent urges that the decision below was perfectly correct) this did not give rise to a federal question or controversy, substantive or procedural, which is, or should be, justiciable in this Court, *Beck* v. *Washington*, 369 U.S. 541 at 554-55 (1962).

Petitioner's supporting brief is devoted primarily to the merits of the controversy. Petitioner sets forth no valid reason why this Court should grant the Writ as is required by Supreme Court Rule 19. Petitioner claims only that a wrong or injustice has been done. Nowhere does he demonstrate why this Court should exercise its sound judicial discretion and order a review of the decision below. No federal question whatsoever is presented.

The mere fact that petitioner feels he has been wronged by the reversal of his jury award does not constitute a ground for the granting of certiorari. The Fourteenth Amendment does not raise a federal question in every case to test the justice or correctness of a judicial decision, *Buchalter* v. *New York*, 319 U.S. 427 at 431 (1943).

Respondent respectfully urges that the Illinois Appellate Court correctly construed Illinois law and quite properly reversed Petitioner's jury award because the complained of and sued upon language was not actionable *per se*. However, even assuming arguendo that the Illinois Appellate Court erred, that error is not reviewable by this Court. Rather the matter was one for the Illinois Supreme Court. That Court refused to hear the case. Apparently the state Supreme Court agreed with the decision of its Appellate Court.

The cases are legion both in Illinois and in this Court that even an erroneous decision of a state court on matters within its jurisdiction does not deprive the unsuccessful party of any right under the Fourteenth Amendment where the parties have been fully heard in the regular course of judicial proceedings; no federal question is presented.

Conclusion

Respondent respectfully prays that this Court deny Petitioner's application for Writ of Certiorari.

Respectfully submitted,

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